

House Bill 1177

By: Representatives Levitas of the 82nd, Jacobs of the 80th, and Henson of the 87th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to standards, labeling, adulteration of food, so as to provide for legislative intent; to provide a short title; to define certain terms; to provide for the posting of kosher certification information by sellers of kosher food and kosher for Passover food; to prohibit the posting of false kosher certification information; to provide for enforcement by the Commissioner of Agriculture; to provide penalties for the failure to post kosher certification information and for the posting of false kosher certification information; to provide for the handling of minor violations; to provide for the institution of criminal proceedings; to provide for injunctive relief; to provide that remedies under this Act are not exclusive; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to standards, labeling, adulteration of food, is amended by revising in its entirety Article 11, relating to kosher foods, as follows:

"ARTICLE 11

26-2-330.

The General Assembly declares that the public has a right to expect honest and adequate information regarding the sale of food presented as kosher and kosher for Passover, specifically, the disclosure of certain facts underlying the claim that food is kosher or kosher for Passover. The General Assembly finds that this information is needed by consumers in order for them to make intelligent, well-informed purchasing decisions that conform to their individual needs and to protect them from misleading or fraudulent claims by unethical sellers. At the same time, the General Assembly is cognizant of the legal

duties already placed upon food sellers in order to protect the public and has tailored these kosher certification disclosure requirements to meet the prevailing practices in the retail food industry so as not to unduly burden sellers. Lastly, the General Assembly in establishing these kosher food certification disclosure standards is mindful of the freedom of religion granted individuals under the United States and Georgia Constitutions and the limitations placed on the power of government so as not cause an infringement of this basic liberty. It is the purpose of this article to ensure that truthful and sufficient kosher food certification information is made available to the public in the sale of kosher and kosher for Passover food and to authorize the Commissioner of Agriculture to take all actions necessary to obtain compliance.

26-2-331.

This article shall be known and may be cited as the 'Georgia Kosher Food Consumer Protection Act.'

26-2-332.

As used in this article, the term:

(1) 'Certifying individual or organization' means an individual, firm, corporation, association, or other entity that provides an assurance to the consumer that the food offered or being exposed for sale is kosher or kosher for Passover.

(2) 'Commissioner' means the Commissioner of Agriculture or his or her duly authorized agent.

(3) 'Consumer' means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

(4) 'Food' means any meat, products containing meat, meat byproducts, meat preparations, poultry, products containing poultry, poultry byproducts, poultry preparations, milk, products containing milk, milk byproducts, milk preparations, fish including shellfish, products containing fish, fish byproducts, fish preparations, articles of food, food products or food ingredients, chewing gum, dietary supplements, or beverages, either raw or prepared, intended for human consumption, whether on the premises where prepared or sold or taken elsewhere for consumption. 'Food' shall also include nonedible products made with or intended to be used with food.

(5) 'Kosher food' means food prepared in accordance with and products sanctioned by Jewish religious rules and requirements and includes foods prepared for the festival of Passover and termed as 'kosher for Passover.' 'Kosher food' does not include foods offered or exposed for sale that are described as 'kosher type' or 'kosher style,' whether

on packaging or in advertisements.

(6) 'Person' means any individual, firm, corporation, or other entity that advertises, represents, or holds himself, herself, or itself out to the public as selling or exposing for sale any food as kosher or kosher for Passover. 'Person' also means those 'food sales establishments' as defined in Code Section 26-2-21 and those 'food service establishments' as defined in Code Section 26-2-370, including, but not limited to, manufacturers, distributors, slaughterhouses, wholesalers, repackagers, stores, restaurants, hotels, inns, boarding houses, lunchroom businesses, catering businesses, butcher shops, summer camps, bakeries, delicatessens, supermarkets, grocery stores, nursing homes, freezer dealers, and food plan companies. These persons may also sell, prepare, or maintain food not represented as kosher. 'Person' shall not include any house of worship.

26-2-333.

(a) Any person who sells or exposes for sale to the public any food represented to be kosher or kosher for Passover, other than food packaged in a sealed container obtained from a manufacturer, distributor, repackager, processor, slaughterhouse, or other party and marked as kosher or kosher for Passover by an independent certifying individual or organization, shall disclose the basis upon which that representation is made by posting the information required by this Code section on a sign in an open and conspicuous manner readily visible to the public upon the premises at which the food is being sold or exposed for sale.

(b) The sign to be posted under this Code section shall:

(1) Be at least 8 1/2 inches by 11 inches in size, printed or handwritten in at least 12 point block letters; and

(2) Contain the following information and in substantially the following form:

'KOSHER CERTIFICATION FORM

Name of Establishment:

Address:

Name and Title of Individual or Name of Organization Certifying Food as Kosher:

Address and Phone Number of Certifying Individual or Organization:

The certifying Individual or Organization visits this establishment:

time(s) daily time(s) weekly time(s) monthly

time(s) yearly always present

This establishment sells:

Meat, poultry, products containing meat or poultry, or meat or poultry byproducts

Milk, products containing milk, or milk byproducts

Shellfish or products containing shellfish or shellfish byproducts

This establishment (does does not) exclusively sell or serve kosher food.

This establishment sells or serves food that is (kosher not kosher) for Passover.

This kosher certification form is valid through / / (exact date or 'indefinite').

THIS SIGN IS POSTED PURSUANT TO THE GEORGIA KOSHER FOOD CONSUMER

PROTECTION ACT, O.C.G.A. §§ 26-2-330, *et seq.*'

(c) Subsection (b) of this Code section notwithstanding, the kosher certification information may be contained in the format of a letter from the certifying individual or organization printed on the individual's or organization's letterhead and posted in the manner described in paragraph (1) of subsection (b) of this Code section; provided, however, that the information contained in the letter must contain, at a minimum, the same information as that set forth in paragraph (2) of subsection (b) of this Code section.

(d) The kosher certification form or letter may contain additional information concerning the foods for sale or exposed for sale, the seller, or the certifying individual or organization as the issuer of the kosher certification form or letter deems appropriate or helpful to consumers; provided, however, that the inclusion of such information shall not be intended to or likely to mislead a consumer in violation of Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.'

(e) If the person selling or exposing for sale any food represented to be kosher or kosher for Passover is the same person certifying the food as kosher or kosher for Passover, that fact shall be indicated on the kosher certification form.

26-2-334.

(a) No person, with intent to defraud, shall display a kosher certification form upon the premises at which food is sold or exposed for sale that falsely represents an individual or organization as certifying the food being sold or exposed for sale as kosher or kosher for Passover.

(b) It shall be prima-facie evidence of intent to defraud if a person displays a kosher certification form or letter that represents an individual or organization as certifying that the food being sold or exposed for sale is kosher or kosher for Passover after having been sent a notice in writing from that individual or organization stating that no such certification is being provided and demanding that the false kosher certification form not be displayed.

26-2-335.

(a) The Commissioner is empowered to enforce the provisions of this article and to promulgate and adopt such regulations and procedures as are necessary to encourage and ensure conformance with this article.

(b) The Commissioner shall have free access at all reasonable hours to any place described in this Code section in which food is sold or exposed for sale as being kosher or kosher for Passover to determine whether the provisions of this article are being violated. No person may refuse entry to the Commissioner during reasonable hours for the purposes of ensuring compliance with this article.

(c) The Commissioner is authorized to receive reports from the public alleging that the provisions of this article or any rules, regulations, or standards adopted and promulgated under this article are being violated. If the Commissioner has reasonable grounds to suspect that such a violation has occurred, the Commissioner may initiate an investigation of the alleged violation based on such a report.

26-2-336.

(a) Except as provided in subsection (c) of this Code section, any person who violates Code Section 26-2-333 or 26-2-334 shall be guilty of a misdemeanor and punished as provided in subsection (b) of this Code section.

(b) Upon a first conviction for a violation of Code Section 26-2-333 or 26-2-334, the person shall be punished by a fine of not less than \$100.00 and not more than \$250.00. Upon a second conviction, the person shall be punished by a fine of not less than \$250.00 and not more than \$500.00. For a third or subsequent conviction, that person shall be punished by a fine of not less than \$750.00 and not more than \$1,000.00.

(c) Any person with three or more convictions of violating Code Section 26-2-333 or 26-2-334 within five years, as measured from the dates of previous arrests or issuance of citations for which convictions were obtained to the date of the current arrest or issuance of a citation for which a conviction is obtained, shall be punished as for a high and aggravated misdemeanor and fined not less than \$1,000.00 and not more than \$2,500.00.

26-2-337.

Nothing in this article shall be construed as requiring the Commissioner to report, for the institution of proceedings under this article, minor violations of this article whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

26-2-338.

Where an alleged violation of this article is supported by probable cause, it shall be the duty of each prosecuting attorney to whom the Commissioner reports any violation of this article to institute cause appropriate proceedings in a court of proper jurisdiction and to prosecute the same in the manner provided by law. Before any violation of this article is reported to any prosecuting attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to be heard by the Commissioner orally or in writing, in person, or by attorney with regard to such contemplated proceedings; provided, however, that nothing in this Code section shall be construed as requiring a prosecuting attorney to institute proceedings in the absence of probable cause to believe that a violation of this article has occurred or otherwise act in violation of his or her oath of office.

26-2-339.

In addition to the remedies provided for in this article, the Commissioner is authorized to apply to the superior court of the appropriate county for an injunction. Such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating Code Section 26-2-333 or 26-2-334, notwithstanding the existence of an adequate remedy at law.

26-2-340.

The remedies conferred by this article shall not be deemed exclusive of others which may exist in Georgia or federal law."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.